

1. THE SENTENCING COMMISSION

Q. What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

The New Mexico Sentencing Commission (originally known as the Criminal and Juvenile Justice Coordinating Council) was created in 1994 and officially began its activities in September 1995. During the 2003 legislative session, House Bill 510 became law, changed the agency's name to New Mexico Sentencing Commission (hereinafter "Commission") and expanded its duties.¹

Q. Membership: who appoints them, for what terms, with what required qualifications?

The Commission is composed of twenty-four members or their designees. Appointed members serve at the pleasure of their appointing authority. Members include:

- the attorney general;
- a district attorney appointed by the district attorneys association of New Mexico;
- the chief public defender;
- two district court judges, one of whom shall be children's court judge, appointed by the district court association of New Mexico;
- a judge from the court of appeals appointed by the chief judge of the court of appeals;
- the dean of the University of New Mexico School of Law;
- the secretary of corrections;
- the secretary of public safety;
- the secretary of children, youth and families;
- the secretary of public education;
- a county sheriff appointed by the executive director of the New Mexico association of counties;
- two public members appointed by the governor, one of whom is designated as chair of the commission;

- three public members appointed by the president pro tempore of the senate;
- three public members appointed by the speaker of the house of representatives;
- two public members appointed by the chief justice of the supreme court;
- one public member who is Native American and a practicing attorney, appointed by the president of the state bar association; and
- one public member appointed by the governor who is a representative of a New Mexico victim organization.²

Q. Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Commission is an independent agency, but is administratively attached to the officer of the governor.³

Q. How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission has four full time staff members: an executive director, a deputy director, a business manager, and a research scientist. Commission staff are employees of the University of New Mexico, under the Institute for Social Research, pursuant to an intergovernmental agreement between the State of New Mexico and the University.⁴

Q. What is the commission's current statutory mandate?

The Commission's current statutory mandate is to advise the executive, judicial, and legislative branches on policies related to criminal and juvenile justice; make recommendations to the legislature concerning changes to laws that the Commission determines would improve such systems; and annually assess, monitor, and report to the legislature on the impact of any enacted sentencing standards.⁵

When developing proposed sentencing reforms, the Commission must:

- study sentencing models in other jurisdictions;
- study the Criminal Sentencing Act, Criminal Code, and all other New Mexico Statutes relating to criminal law, sentencing, procedure, and probation and parole;
- review past studies and reports related to changes to the Children’s Code, Criminal Code, Criminal Sentencing Act or other statutes related to criminal law, sentencing, procedure, and probation and parole;
- study past and current criminal sentencing and release practices and create a statistical database to simulate the impact of various sentencing policies;
- study the full range of prison, non-prison, and intermediate sanctions;
- determine the principal purpose for criminal sanctions;
- determine the role of criminal history in making criminal sentencing decisions;
- define dispositional policy that determines when adult felony offenders are confined in state prisons and county jails or sentenced to non-prison and intermediate sanctions;
- establish the length of criminal sentences;
- establish the appropriate use of community service and fines;
- structure proposed guidelines with an aim towards consistency in all aspects of sentencing policy;
- assess the impact of commission recommendations to modify policy on the availability and need for correctional resources and programs;
- use expertise of national or state organizations with experience in sentencing reform; and
- present findings to the appropriate legislative interim committee.⁶

The Commission is also tasked with:

- monitoring any enacted guidelines with respect to uniformity and proportionality; conducting analysis on the effectiveness on any enacted guidelines;

- serving as a clearinghouse for the collection, analysis, and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration time served, and prison population;
- reviewing all proposed changes to the laws that create new offenses, changes classifications of offenses, or changes the range of punishments for offenses with respect to whether such changes would improve the criminal justices system;
- contingent on available funding, providing impact estimates, and incorporating prison population projections, on all proposed legislation that has the potential to affect correctional resources; and⁷
- providing a written report to the Secretary of Corrections, all state criminal court judges, the Administrative Office of the District Attorneys, and the Chief Public Defender specifying the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses due to meritorious deductions earned by prisoners during the previous fiscal year.⁸

Q. Do statutes task the commission with management of prison and jail resources or with projects or initiatives to address prison or jail populations?

When making recommendations on sentencing reform, the Commission must consider the “availability and need for correctional resources and programs.” The Commission is also tasked with conducting analysis on how proposed legislation would affect projected prison population, and correctional resources.⁹ In addition, the Commission must provide a report to the Secretary of Corrections, all state criminal court judges, the Administrative Office of the District Attorneys, and the Chief Public Defender specifying the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses due to meritorious deductions earned by prisoners during the previous fiscal year.¹⁰

Q. Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

Relevant executive, judicial, and other state agencies are required to provide data to the Commission on at least an annual basis.¹¹ The Commission is not required to make the datasets it maintains public. The Commission is also authorized to deny requests for data if the request is: made by an organization that resells such data; burdensome on the operations of the Commission; for data collected in a statistically invalid manner; for data that is in a format not maintained by the commission; or for data that is prevented by statute or court order from being released.¹² Finally, the Commission may deny requests, made by any entity, for a direct link to a Commission database.¹³

2. PRISON RELEASE DISCRETION

Q. Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

New Mexico has a determinate sentencing policy. Only those sentenced to life imprisonment (i.e., those

convicted of first-degree murder) are subject to discretionary release.¹⁴ The rest must be released on parole after serving the full sentence less any earned meritorious time.¹⁵ The Parole Board establishes conditions of release and manages the violations hearing process.¹⁶

Q. Does this jurisdiction have a “truth in sentencing” law, limiting the extent of early release?

New Mexico requires that prisoners serve the full term for which they were sentenced less any reductions for earned meritorious time. The amount of meritorious time an individual can earn ranges from a low of 4 days per month served for those convicted serious violent offenses to a high of 30 days per month served for those convicted of nonviolent offenses. The amount of time an individual is eligible to earn decreases if that individual is revoked from parole, and may also be forfeited under certain circumstances.¹⁷

¹ N.M. Stat. Ann. § 9-3-10(A) (2018); 2003 N.M. Laws ch. 75, § 1.

² N.M. Stat. Ann. § 9-3-10(B)(1)-(17) (2018).

³ N.M. Stat. Ann. § 9-3-10(F) (2018).

⁴ Institute for Social Research, *Staff*, <http://isr.unm.edu/our-team/index.html> (last visited Aug. 3, 2018).

⁵ N.M. Stat. Ann. § 9-3-10(D)(5)-(7) (2018).

⁶ N.M. Stat. Ann. § 9-3-10(D)(8)(a)-(o) (2018).

⁷ N.M. Stat. Ann. § 9-3-10(D)(9)-(13) (2018).

⁸ N.M. Stat. Ann. § 31-18-15(G) (2018).

⁹ N.M. Stat. Ann. § 9-3-10(D)(13) (2018).

¹⁰ N.M. Stat. Ann. § 31-18-15(G) (2018).

¹¹ N.M. Admin. Code § 10.14.2.9(A) (2018).

¹² N.M. Admin. Code § 10.14.2.11(A) (2018).

¹³ N.M. Admin. Code § 10.14.2.11(B) (2018).

¹⁴ N.M. Stat. § 31-21-10 (2018).

¹⁵ N.M. Stat. Ann. § 33-2-38 (2018) (“A prisoner shall not be discharged from the penitentiary of New Mexico or any other correctional facility until he has served the full term for which he was sentenced.”); N.M. Stat. Ann. § 33-2-34 (2018) (describing meritorious deductions). *See also* N.M. Corr. Dep’t Parole Bd., FAQ,

http://cd.nm.gov/parole_board/parole.html (last visited Aug. 18, 2018).

¹⁶ N.M. Stat. §§ 31-21-10; 31-21-25 (2018).

¹⁷ N.M. Stat. Ann. §§ 33-2-34 to 33-2-38 (2018).